

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT -9 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ERIC DALE JERMAN,

Appellant.

)  
)  
) 2 CA-CR 2007-0197  
) DEPARTMENT B  
)

MEMORANDUM DECISION

) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20063116

Honorable Frank Dawley, Judge Pro Tempore  
Honorable Michael J. Cruikshank, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General  
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E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, appellant Eric Jerman was convicted of possession of cocaine and drug paraphernalia. The trial court suspended the imposition of sentence and imposed a twelve-month term of probation. On appeal, Jerman argues the court erred in admitting evidence obtained in an unlawful search and in precluding a character witness from testifying on his behalf. We affirm for the reasons set forth below.

### **Factual and Procedural Background**

¶2 We view the evidence on appeal in the light most favorable to sustaining the jury's verdict, and in so doing we resolve all reasonable inferences from the evidence against the defendant. *State v. Cox*, 214 Ariz. 518, ¶ 2, 155 P.3d 357, 358 (App.), *aff'd*, 217 Ariz. 353, 174 P.3d 265 (2007). Jerman was arrested and charged with possession of cocaine and drug paraphernalia after he attempted to pass through a security checkpoint in the Pima County Justice Court with these items hidden in a cigarette pack. Before trial, Jerman filed a motion to suppress the evidence obtained at the security checkpoint, arguing it was the product of an illegal administrative search. The trial court denied the motion following a hearing.

¶3 At trial, Jerman testified that he had not knowingly possessed the contraband because he had accidentally switched cigarette packs with a stranger while at a restaurant on the day he was arrested, and he had not known it contained any drugs. Before the trial began, the court granted the state's motion in limine to preclude Jerman from offering a witness to testify about his character and reputation for truthfulness. Following his conviction on both counts in the indictment, Jerman filed this appeal.

## Motion to Suppress

¶4 Jerman first argues the trial court erred in denying his motion to suppress the evidence obtained during the courthouse search. “We review a trial court’s ruling on a motion to suppress for an abuse of discretion.” *State v. Barnes*, 215 Ariz. 279, ¶ 5, 159 P.3d 589, 590 (App. 2007). In so doing, we consider only evidence presented at the suppression hearing and defer to the trial court’s findings of fact. *Id.* ¶ 2. We review its legal conclusions and any mixed questions of law and fact de novo. *Id.* ¶ 5.

¶5 At the suppression hearing, a security officer employed by the justice court offered the sole evidence regarding the court’s general search policy and procedures.<sup>1</sup> He testified that before people enter the courthouse, a sign alerts them they must pass through a security checkpoint to gain entry. They are then free to leave at that point rather than submit to the search. Those wishing to enter the courthouse are then screened for “contraband,” meaning “[a]nything that poses a threat.” This includes glass, sharp plastics, “bullets, [or] anything of that nature.” Although illegal drugs are prohibited in the courthouse, security officers are not instructed to look for them.

¶6 Any container brought into the court is subject to search, and all personal items are scanned in an x-ray machine. Loose items in a person’s pockets, however, are first emptied into an “x-ray bowl,” examined by security officers, and then put through the x-ray machine. All cigarette packs placed in the x-ray bowl are opened and visually inspected.

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<sup>1</sup>Jerman’s suggestion that the officer testified only about his own practices, not the general screening policies and procedures of the justice court, is not consistent with our reading of the record.

However, cigarette packs within other containers, such as backpacks, purses, or briefcases, are opened only if the x-ray machine raises a question about the cigarette pack's contents and the owner of the container gives permission for it to be opened.

¶7 When Jerman put his cigarette pack in the x-ray bowl, the security officer opened it, found a glass vial and a plastic straw inside, and showed the items to a nearby Pima County Sheriff's Department deputy to determine what they were. The trial court found the search to be constitutional and denied Jerman's motion to suppress.

¶8 As he did below, Jerman argues on appeal that "because the State failed to introduce the Pima County Justice Courthouse administrative search policy and protocols into evidence" at the suppression hearing, the trial court did not have sufficient evidence to find this search constitutional. Alternatively, Jerman contends that the courthouse search was unconstitutional insofar as it was more intrusive than necessary, was not conducted uniformly, and did not give him the option to end the search and exit the building. For those reasons, he alleges the court's rulings violated both our state and federal constitutions.

¶9 Warrantless searches are presumptively unreasonable under the Fourth Amendment of the federal constitution, *State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986); *State v. Miller*, 110 Ariz. 491, 493, 520 P.2d 1115, 1117 (1974), as well as article II, § 8 of the Arizona Constitution. *State v. Bolt*, 142 Ariz. 260, 264-65, 689 P.2d 519, 523-24 (1984). Evidence obtained during such a search is inadmissible unless the state demonstrates a recognized exception to the warrant requirement. *State v. Sauve*, 112 Ariz. 576, 577, 544 P.2d 1091, 1092 (1976).

¶10 Searches conducted as a condition of entering sensitive public facilities, such as airports and courthouses, are specifically exempted from the warrant requirement. *See McMorris v. Alioto*, 567 F.2d 897, 898-99 (9th Cir. 1978) (upholding limited search for weapons and bombs as condition for entering county courthouse); *United States v. Davis*, 482 F.2d 893, 908, 910-11 (9th Cir. 1973) (upholding limited search for weapons and explosives at airports as condition for boarding plane), *overruled on other grounds by United States v. Aukai*, 497 F.3d 955 (9th Cir. 2007) (en banc).<sup>2</sup> But such searches must be reasonable. *Davis*, 482 F.2d at 910. When evaluating the reasonableness of a search in this context, a court must consider whether (1) the scope of the search was limited to detecting weapons and explosives, (2) minimally intrusive methods were used, and (3) those subjected to the search were given notice of the impending search and the opportunity to avoid it altogether before it commenced. *See id.* at 908, 910-11; *see also Aukai*, 497 F.3d at 959-60 (finding notice of conditional search, not consent, required under Fourth Amendment).

¶11 By these standards, we find the trial court did not err in determining the search here was reasonable. According to the security officer's testimony, the search procedure was designed to find weapons. The officers were instructed to search people and their

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<sup>2</sup>Article II, § 8 of the Arizona Constitution, which explicitly recognizes a right to privacy, does not afford more protection than the federal constitution from security screening at sensitive public facilities. *See Bolt*, 142 Ariz. at 264-65, 689 P.2d at 523-24 (noting state constitution specifically aimed at preserving sanctity of home); *State v. Krantz*, 174 Ariz. 211, 215, 848 P.2d 296, 300 (App. 1992) (same).

belongings for dangerous items, which cigarette packs are readily capable of concealing; they were not instructed to look for drugs or otherwise collect evidence of crimes.

¶12 The officer's testimony also supported the conclusion that the search was minimally intrusive. He testified that some weapons, such as glass and pointed plastics, might not be revealed clearly in an x-ray scan and security officers would have to "look a little bit harder" to see them. For that reason, the risk that dangerous items might escape detection in the x-ray machine justified a brief, efficient inspection of cigarette packs placed in the x-ray bowl. *See Florida v. J.L.*, 529 U.S. 266, 274 (2000) (privacy expectations diminished when entering sensitive public facilities).

¶13 Finally, the officer testified that those who encountered the security checkpoint were allowed the opportunity to leave without further search or detention if they chose not to pass through it. And no evidence suggests that Jerman was not provided that opportunity. But, because allowing people test runs through security checkpoints could expose weaknesses in the screening process, officers may insist on completing the search of a person once it has commenced. *See Aukai*, 497 F.3d at 960-61.

¶14 Here, the officer testified that persons who do not wish to have their purses or containers inspected after those items have passed through the x-ray machine are provided the opportunity to avoid the inspection if they agree to leave the building. Jerman complains that officers provide no similar opportunity to those persons, like him, who place their cigarette packs in the x-ray bowl—and therefore maintains that, by comparison, the latter search is "more intrusive than necessary." But, as discussed, the officers are not legally

required to allow either category of person to avoid further inspection. *See id.* And, the mere fact that the officers employed a protocol providing additional privacy to those persons with larger closed containers does not require them to provide similar benefits to those who place their smaller personal items in the x-ray bowl. Moreover, the trial court found, in conformity with the testimony, that the search of cigarette packs placed in x-ray bowls was conducted uniformly, without regard to the owners' identity or appearance. *See State v. Book*, 847 N.E.2d 52, ¶ 17 (Ohio Ct. App. 2006) (finding courthouse search unconstitutional when security officer did not screen people he had known for a long time).

¶15 German emphasizes the officers essentially employed different search procedures for stand-alone cigarette packs than they employed for cigarette packs placed inside closed containers. But, to the extent the officers' protocol as to larger closed containers was designed with any such distinction in mind, that distinction was reasonable given the comparatively trivial privacy expectation an average person would have in an exposed cigarette pack at a courthouse checkpoint. Unlike a purse or briefcase, a cigarette pack typically advertises its contents and is not generally used by ordinary people to store private papers or items. Hence, when a person places a cigarette pack in an x-ray bowl, it is not unreasonable for a security officer to look into the pack to confirm its presumptive contents. *See Downing v. Kunzig*, 454 F.2d 1230, 1233 (6th Cir. 1972) (upholding courthouse search as reasonable when papers not scrutinized, items not confiscated, and no undue restraint imposed on owners).

¶16 We also disagree with Jerman’s related contention that documentary evidence of the justice court’s search policy or protocols was required for the trial court to rule on the constitutionality of what Jerman characterizes as an “administrative search.” Although airport and courthouse searches have been referred to and analyzed as administrative searches, *see, e.g., United States v. Bulacan*, 156 F.3d 963, 967 (9th Cir. 1998); *McMorris*, 567 F.2d at 899, the Supreme Court has never expressly held them to be such. *See Aukai*, 497 F.3d at 959 n.2. Indeed, the rationale for these types of pre-entry searches makes them distinguishable in one key respect: the need to protect lives in demonstrably dangerous environments justifies a suspicionless search for weapons and explosives at courthouses. *See Downing*, 454 F.2d at 1233. Administrative searches, in contrast, serve less obviously compelling purposes and must therefore be authorized by, and executed in accordance with, particular statutes or regulations. *See New York v. Burger*, 482 U.S. 691, 708, 711-12 (1987) (upholding inspection of junkyard records as authorized by statute); *United States v. Biswell*, 406 U.S. 311, 311-12, 315, 317 (1972) (upholding inspection of pawn shop gun storage room as authorized by statute); *see also Camara v. Mun. Ct.*, 387 U.S. 523, 534, 538, 540 (1967) (holding that “area inspections” to enforce local building code unconstitutional when consent not given, warrant not issued, and resident “unable to verify either the need for or the appropriate limits of the inspection”).

¶17 Given this important distinction, a courthouse search is more appropriately classified as an “exempted area” exception to the warrant requirement than as an “administrative search.” *United States v. Kincade*, 379 F.3d 813, 822-23 (9th Cir. 2004);

*see also J.L.*, 529 U.S. at 274 (noting diminished Fourth Amendment privacy expectation in sensitive public facilities). And because a courthouse search serves a compelling safety purpose, we do not believe its legitimacy depends upon the existence of what Jerman calls an “authoritative document” authorizing the search.

¶18 As the Supreme Court has observed: “[W]here the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as ‘reasonable’—for example, searches now routine at airports and at entrances to courts and other official buildings.” *Chandler v. Miller*, 520 U.S. 305, 323 (1997). A courthouse search will be reasonable provided it is narrowly tailored to serve its protective purpose, not a general search for evidence of a crime. *Davis*, 482 F.2d at 909-10. In making this determination, a court evaluates the search at the programmatic level. *See City of Indianapolis v. Edmond*, 531 U.S. 32, 47-48 (2000); *Bulacan*, 156 F.3d at 967-68; *United States v. \$124,570 U.S. Currency*, 873 F.2d 1240, 1244-45 (9th Cir. 1989). Although documentary evidence of search policies and protocols might be helpful in this task, as the trial court noted here, such evidence is not necessary to determine whether the search was properly calibrated to detect weapons or explosives. *See Chandler*, 520 U.S. at 323; *see also People v. Spalding*, 776 N.Y.S.2d 765, 769 (N.Y. City Crim. Ct. 2004) (ruling initial search of knapsack constitutional where courthouse security officer testified about general search procedures). And Jerman has cited no authority to the contrary.<sup>3</sup>

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<sup>3</sup>Although Jerman cites *United States v. Rothman*, 492 F.2d 1260 (9th Cir. 1973), for the proposition that an approved administrative screening program is a prerequisite for a valid administrative search, *Rothman* merely held that the search of an airline passenger’s

¶19 Because we find from the testimony provided that the search of Jerman’s cigarette pack was a reasonable, minimally intrusive method of detecting nonmetallic weapons, we affirm the trial court’s ruling denying his motion to suppress.

### Character Evidence

¶20 Finally, Jerman argues that his proffered character witness, a friend since childhood, should have been allowed to testify about Jerman’s character and reputation for truthfulness. Jerman concedes that his honesty was not pertinent to the specific elements of the drug offenses with which he was charged and of which he was convicted. *See* Ariz. R. Evid. 404(a)(1) (evidence of pertinent character trait of accused admissible). He nevertheless argues that, under Rule 404(a)(1), and given his constitutional right to present a defense, his character for truthfulness became relevant when he testified and the prosecutor attacked his credibility.

¶21 As our supreme court has stated: “While it is true that an accused may offer evidence of his good character from which the jury may infer that he did not commit the crime charged, such good character may be offered *only so long as it pertains to the trait involved in the charge.*” *State v. Altamirano*, 116 Ariz. 291, 293, 569 P.2d 233, 235

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checked luggage after he had been arrested for assault—and, therefore, at a time when there was no possibility he would be flying—was unrelated to airport security and could not be justified under any exception to the warrant requirement. *Id.* at 1263, 1266. And although the Ninth Circuit has analyzed specific security regulations when assessing the constitutionality of search programs at sensitive public facilities, *see, e.g., Bulacan*, 156 F.3d at 974; *\$124,570 U.S. Currency*, 873 F.2d at 1242-43, the court has never held this particular form of evidence to be the exclusive means of establishing general search purposes and procedures.

(1977) (emphasis added); *see also State v. Kaiser*, 109 Ariz. 244, 246, 508 P.2d 74, 76 (1973) (“[G]ood character is a fact that the accused may offer in his defense so long as it pertains to the trait involved in the charge.”). Because Jerman’s character for truthfulness was not relevant to any trait involved in the charges here, we must reject his claim. *See State v. Sullivan*, 205 Ariz. 285, ¶ 15, 69 P.3d 1006, 1009 (App. 2003) (appellate court must follow law as articulated by the supreme court).

¶22 Finding no error, constitutional or otherwise, we affirm the trial court’s ruling on Jerman’s motion to suppress and uphold his convictions and the probationary term imposed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge